

9504031, 1994 WL 741313 (IRS PLR)

Internal Revenue Service (I.R.S.)

Private Letter Ruling

Issue: January 27, 1995

October 31, 1994

Section 7701 -- Definitions

7701.00-00 Definitions

7701.20-00 Indian Tribal Government

Section 7871 -- Indian Tribal Governments Treated As States For Certain Purposes

7871.00-00 Indian Tribal Governments Treated As States For Certain Purposes

CC: DOM:FI&P:2 / TR-31-2346-94

X = \*\*\*

State = \*\*\*

Act = \*\*\*

Law = \*\*\*

Council = \*\*\*

Committee = \*\*\*

This is in reply to a letter dated July 6, 1994, requesting a ruling that X is an "Indian tribal government" as defined in [sections 7701\(a\)\(40\)](#) and [7871\(a\) of the Internal Revenue Code](#).

The Indian Tribal Government Tax Status Act of 1982 (Title II of [Pub.L. No. 97-473, 96 Stat. 2605](#), 2607-11, as amended by [Pub.L. No. 98-21, 97 Stat. 65](#), 87) ("Indian Tax Status Act"), added provisions to the Code pertaining to Indian tribal governments ("TG's"). For two years beginning in 1983, TG's were to be treated as states for some federal tax purposes. Section 1065 of the Tax Reform Act of 1984 ([Pub.L. No. 98-369, 98 Stat. 1048](#)) made such treatment permanent.

Under [section 7701\(a\)\(40\)](#) of the Code, a TG is the governing body of any tribe, band, community, village, or group of Native Americans, or (if applicable) Alaska Natives, that is determined by the Secretary of the Treasury, after consultation with the Secretary of the Interior, to exercise governmental functions.

Under [section 7871\(a\)](#) of the Code, a TG is treated as a state for the federal tax provisions enumerated therein.

Conference Report H.R.Rep. No. 97-984, 97th Cong., 2nd Sess. 15 (1982), provides that the Indian Tax Status Act will not apply to any TG unless it is recognized by the Treasury Department (after consultation with the Interior Department) as exercising sovereign powers. The report further provides that sovereign powers include the power to tax, the power of eminent domain, and police powers (such as control over zoning, police protection, and fire protection).

Under the provisions of Law, X's status as a tribe was terminated. Under the provisions of Act, X's status as a tribe was restored, and its current constitution is recognized as valid. Under its constitution, X has a Council having the powers to negotiate with federal, state, and local governments, employ legal counsel, regulate the use and disposition of tribal property and funds, pass and enforce land ordinances, veto any sale, disposition, lease, or encumbrance of lands, interests in lands, or other assets of X, protect and preserve the property, wildlife, and natural resources of X's land, and adopt resolutions regulating its procedures. Council is composed of all qualified voters of X, who elect Committee.

When Council is not in session, its powers are, pursuant to X's constitution, exercised by

Committee.

Among its law enforcement powers, Council and Committee exercise the powers to forcibly remove a tribal member's property from X's lands, forcibly remove tribal members who participate in unlawful activities, remove tribal members from tribal membership rolls, regulate hunting and fishing by both tribal members and nonmembers on X's lands, regulate allocation of homesites to X's members, levy taxes on tribal members and levy other taxes, define laws applicable to members while on X's lands, and regulate alcoholic beverages.

Accordingly, we conclude that X is an "Indian tribal government" within the meaning of [section 7701\(a\)\(40\)](#) and [section 7871](#) of the Code.

Except as specifically ruled upon above, no opinion is expressed regarding any other section of the Code. This ruling does not establish that X, Council, or Committee qualifies for any particular tax benefit. For example, when a TG seeks exemption from excise taxes, it must be able to demonstrate that the underlying transaction involves the exercise of an essential governmental function.

This ruling is directed only to the taxpayer that requested it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file in this office, a copy of this ruling is being sent to your authorized representative.

Sincerely yours,

Assistant Chief Counsel  
Financial Institutions & Products

By

William E. Coppersmith  
Chief, Branch 2

This document may not be used or cited as precedent. [Section 6110\(j\)\(3\) of the Internal Revenue Code](#).

END OF DOCUMENT